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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/678,838

10/03/2003

Kenneth F. Bailey

4946-006

1148

24112

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12/04/2006

COATS & BENNETT, PLLC

P O BOX 5

RALEIGH, NC 27602

EXAMINER

FOX, CHARLES A

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/678,838	Applicant(s) BAILEY, KENNETH F.	
	Examiner Charles A. Fox	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8,10-12 and 14-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 40-55 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,11-16,18,19,21-26 and 28-30 is/are rejected.
- 7) ☒ Claim(s) 8,10,17,20 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____. | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) <input type="checkbox"/> Notice of Informal Patent Application
6) <input type="checkbox"/> Other: _____. |
|---|--|

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4,5,7,11,12,14,16,19 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selhorst in view of Lupton. Regarding claims 1,2,11,12,19 and 56 Selhorst US 2,239,448 teaches a device for distributing material comprising:

a drum (5) disposed to rotate about a generally horizontal axis;

said drum having a plurality of outwardly extending blades;

wherein said material when passed over said drum covers an arc of at least 90° when viewed from said the side of said device. There is no critical proof that the speed of the drum is important, as such the Selhorst reference is considered a functional equivalent structure. Regarding the packing density it is assumed that all horizontal axis rotary throwers will pack chips at the claimed density absent any other information. He does not teach the paddles as having two distinct faces. Lupton GB 2,173,682 teaches a spreader with a drum comprising:

blades with a first leading face (106) and a second angled face (104);

said second face having a forward angle relative to said first face, wherein said first face section is disposed closer to the axis of rotation than is second said face section. It would have been obvious to one of ordinary skill in the art, at the time of

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invention to provide the device taught by Selhorst with paddles as taught by Lupton to improve the distribution of material through the device.

Regarding claims 4,14 Selhorst also teaches that the arc is generally downward facing.

Regarding claim 5 Selhorst also teaches that the core of the drum has a non-circular cross section.

Regarding claims 7,16 Selhorst further teaches a feed chute upstream of said drum for feeding material to said drum.

Claims 6,9,15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selhorst and Lupton as applied to claims 1 and 11 above, and further in view of Kneer. Selhorst teaches the limitations of claims 1 and 11 as above, he does not teach driving the drum with a motor. Kneer US 4,820,108 teaches a device with a horizontal rotary thrower (3) that is driven by a motor and which is used to fill a container. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Selhorst with a motor in order to allow the device to operate independent from its movement across ground, thereby allowing the device to work while stationary.

Claims 21-26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lupton. Regarding claims 21 and 25 Lupton teaches a device for spreading particulate material comprising:

- a drum disposed to spin about a horizontal axis;

- a plurality of outward extending blades on said drum;

said blades having a first face section (106) and a second angled face section (1040 connected thereto;

said second face section forward facing. There is no critical proof that the speed of the drum is important, as such the Selhorst reference is considered a functional equivalent structure. While Lupton does not teach using their device with wood chips, It would have been obvious to one of ordinary skill in the art, at the time of invention that wood chips could have easily been spread using the Lupton device.

Regarding claims 22 and 30 and Lupton also teaches that the faces are generally planer and that said second face is angled at about 30 degrees relative to said first face.

Regarding claims 23 and 24 Lupton also teaches that said first face extends from said drum in a substantially radial direction.

Regarding claim 26 Lupton further teaches a feed chute for the drum assembly for introducing a particle stream to said drum.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lupton as applied to claim 21 above, and further in view of Kneer. Lupton teaches the limitations of claim 21 as above, he does not teach driving the drum with a motor. Kneer US 4,820,108 teaches a device with a horizontal rotary thrower (3) that is driven by a motor and which is used to fill a container. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Lupton with a motor in order to allow the device to operate independent from its movement across ground, thereby allowing the device to work while stationary.

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Response to Amendment

The amendments to the claims filed on September 25, 2006 have been entered into the record.

Allowable Subject Matter

Claims 40-55 are allowed.

Claims 8,10,17,20 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 8,10,17,20,27,40 and 48 have limitations dealing with dividers in an infeed chute which are not taught or suggested by the cited prior art.

Response to Arguments

Applicant's arguments filed September 25, 2006 have been fully considered but they are not persuasive. Regarding the "forward facing" vanes of Lupton, it is noted that a forward direction of the device is not put forth. The vanes taught by Lupton teach the limitations as claimed by the applicant, as such the claims are finally rejected. Following applicant arguments it would seem that taking their invention and simply reversing the direction of the vanes and motor would yield a new invention. That is not the position of the examiner as these fall under the skills that one of ordinary skill in the art would have. As such the Lupton reference is held to be valid.

Regarding the core of the Selhorst reference the drum (5) has four sectional pieces as seen from the side, they are mounted to a core structure that is cross shaped along it's cross section. The rejections are hereby made final.

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Regarding the use of the Kneer reference to teach a container more structure than was claimed was pointed out to provide a motivation to make the combination. The fact that a reference teaches more than is claimed does not make it ineligible for use as prior art. The claims stand finally rejected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

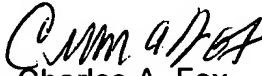
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 11-30-06
Charles A. Fox
Examiner
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